UNITED STATES COURT OF APPEALS
FOR THE
TENTH CIRCUIT

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At a stated Term of the United States Court of Appeals for the Tenth Circuit, held at the United States Courthouse in the City of Denver, Colorado, May 14, 1982.

Present: HONORABLE JUDGES HOLLOWAY, BARRETT, AND DOYLE

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In the matter of JEROME G. BEERY, d/b/a JEROME G. BEERY, BROWNVILLE GRAIN CO.,
APELLANT

v.

DAN E. TURNER, Trustee and HONORABLE JAMES A. PUSATERI, Bankruptcy Judge

Nos. 77-1991
78-1758
80-1577

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Appellant Beery brought separate appeals from two orders entered in this bankruptcy proceeding in Nos. 77-1991 and 78-1758. In addition, Beery filed a "Complaint and Petition for Injuntive Relief," in

No. 80-1577 in this court by which he sought to have us enjoin the disposition or transfer of Beery's interests in certain property until the appeals are resolved. The two appeals and the complaint were consolidated here.

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Beery originally filed a voluntary petition seeking relief under Chapter XI of the Bankruptcy Act on January 16, 1976. The case was automatically referred to the bankruptcy judge. Beery then filed a plan for an arrangement under Chapter XI, but during a hearing in April 1976, Beery refused to file verified schedules and statements pursuant to Bankruptcy Rules 11-11 and 11-12. Beery also stated that he was withdrawing his plan or arrangement and his Chapter XI petition.

Later during the same hearing on April 15, the bankruptcy judge converted the proceeding to one of straight bankruptcy, stating that Beery had failed to file the required

verified statements and schedules and that Beery was effectively adjudicated a bankrupt. These rulings were memorialized in an order by the bankruptcy judge filed April 20 concluding that Beery was adjudicated a bankrupt and that the case proceed as a bankruptcy case.

Beery then filed a motion to reconsider the adjudication of bankruptcy. He apparently claimed that he was a farmer,[1] as defined by the Bankruptcy Act, and as such could not be adjudicated a bankrupt without his written consent. See 11 U.S.C. #779 (1976); Bankruptcy Rule 11-42(e). In July 1977 the bankruptcy judge entered an order vacating his order of April 1976 insofar as necessary to have a de novo

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[1] Beery's motion to reconsider was not included in the record on appeal, but we presume from the course of the proceedings that Beery claimed therein that he was a farmer.

determination of the factual issue of whether Beery was a farmer when he filed his petition under Chapter XI. In August 1977 the bankruptcy judge recommended to the district court that the case be partially withdrawn for a de novo trial before the district court on this factual issue. The district courrt entered an order partially withdrawing the case from the bankruptcy judge and an evidentiary hearing was held (hereinafter the "September 1977 hearing"). The district judge entered an order concluding that Beery was not a farmer as defined by the Bankruptcy Act and overruling Beery's motion for reconsideration of the bankruptcy judge's orders converting the case to a straight bankruptcy proceeding and adjudicating Beery a bankrupt. Beery timely appealed from this order.

Beery also timely appealed an order entered by the district court in March

1978 affirming another order of the bankruptcy judge. The bankruptcy judge had denied Beery's motion for a jury trial on the issues of insolvency and commission of an act of bankruptcy and also denied Beery's motion for dismissal of Beery's Chapter XI petition as moot.[2]

On this appeal Beery asserts that numerous errors were committed by the bankruptcy judge, the district judge, or both, and seeks injunctive relief. We have considered all of Beery's claims and find them to be without merit. Our reasons follow.

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[2] The Bankruptcy Act of 1898 was repealed by the Bankruptcy Reform Act of 1978, Pub. L. No. 95-598, #401, 92 Stat. 2682, generally effective October 1, 1979. Id. #402. Beery filed his petition under Chapter XI on January 16, 1976.

PETITIONER'S NOTE

Since the decision is very lengthy I have deleted Sections II through IX. Retyping the entire decision in this smaller format would have made the petition bulky and very expensive for me to have prepared. I have, however, included forty copies of the decision in the standard 81/2 by 11 format. Since I am proceeding pro se I beg the court's indulgence in this matter.

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As noted, there is also pending a "Complaint and Petition for Injunctive Relief" in No. 80-1577, requesting that we enjoin the transfer or disposition of certain property, pending appeal. We have concluded there was no reversible error in the bankruptcy proceedings and are not persuaded that any injunctive relief was or is proper.

In Nos. 77-1991 and 78-1758, we have considered the remaining contentions of appellant Beery and find that they are without merit, as we did the contentions discussed above.[20] Accordingly, No. 80-1577 is dismissed, and in Nos. 77-1991 and 78-1758, the orders appealed from are affirmed.

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[20] We note that there is a claim by Beery that the courts below improperly ignored his affidavits to disquilify the bankruptcy judge and the district judge. Beery

filed the affidavits in April 1978 after his last notice of appeal was filed. (I R. 177-78). Thus the courts below could not have considered the affidavits prior to the orders appealed from. Furthermore the affidavits are not in our record. We thus have nothing to review on this issue.

MAY TERM - July 1, 1982

Before Honorable William J. Holloway, Jr., Honorable James E. Barrett, and Honorable William E. Doyle, Circuit Judges.

IN THE MATTER OF JEROME G. BEERY, d/b/a JEROME G. BEERY, BROWNVILLE GRAIN CO.,
Appellant,

v.

DAN E. TURNER, Trustee,
Appellee,

JEROME G. BEERY,
Petitioner,

v.

DAN E. TURNER, TRUSTEE and HONORABLE JAMES A. PUSATERI, Bankruptcy Judge,
Respondents.

Case Nos. 77-1991, 78-1758, 80-1577.

This matter comes on for consideration of appellant's petition for rehearing filed in the captioned appeals.

Upon consideration whereof, the petition for rehearing is denied.

HOWARD K. PHILLIPS, Clerk

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